

NATURAL RESOURCES DEFENSE COUNCIL



XC: Board Members 06-1-5
Chairman CEW 1/26/05
TJ TAC
KT Legal (AM/MT) MSOD



Union of
Concerned
Scientists

Citizens and Scientists for Environmental Solutions

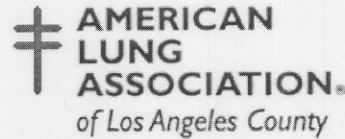


PLANNING AND CONSERVATION LEAGUE



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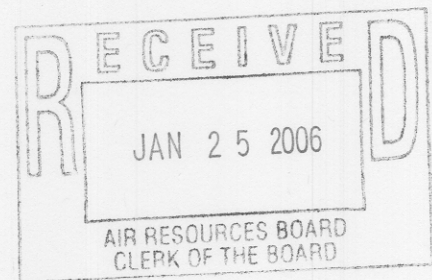
ENVIRONMENTAL DEFENSE
finding the ways that work



January 25, 2006

Via Email and Facsimile

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814
hdvip2006@listserv.arb.ca.gov



**Re: Amendments to the Heavy-Duty Vehicle Smoke Inspection Program
(Implementation of Assembly Bill 1009, Pavley 2004, Chapter 873)**

Dear Chairman Sawyer and Members of the Board:

We write on behalf of the Natural Resources Defense Council, Coalition for Clean Air, Union of Concerned Scientists, Center for Energy Efficiency & Renewable Technologies, Planning and Conservation League, Clean Power Campaign, Environmental Defense now known as California Clean Air for Life Campaign, American Lung Association of California and American Lung Association of Los Angeles County to urge the California Air Resources Board ("ARB") to **adopt with amendments** the proposed Amendments to the Heavy-Duty Vehicle Inspection Program ("Proposed Rules").

The Proposed Rules were drafted in response to Assembly Bill 1009 (Pavley), which was enacted to ensure that operators of heavy-duty commercial motor trucks that travel over the border to California comply with the same emission standards as trucks manufactured in the United States. The Proposed Rules seek to implement the objectives of AB 1009. We greatly appreciate the time staff has taken to craft such important rules and believe that they will help

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ensure that California residents, many of whom already breathe some of the most unhealthful air in the nation, will not suffer from substantially worse air quality as border restrictions are eased and international commercial trucking increases. However, we believe that the rules can be strengthened, and thus recommend the following:

First, the Board should impose the maximum fines possible for violations of the Proposed Rules. Currently, the Proposed Rules impose a \$300 fine if an engine is missing an emission control label ("ECL"), or if the engine does not comply with U.S. federal emission standards. However, since the release of the staff report, staff has indicated that they will recommend that a \$500 fine be imposed per violation of the proposed rules. We fully support the imposition of higher fines.

The higher \$500 fine is warranted. The intent of AB 1009 was to preclude the operation of heavy-duty trucks in California that do not meet U.S. federal emissions standards. And given that the proposed rules do not preclude noncompliant trucks from entering the state, the Board must ensure that any penalty imposed creates a deterrent effect. Accordingly, it makes sense that a \$500 fine would have a greater deterrent effect than a \$300 fine. Moreover, it is worth noting that even the elevated \$500 fine is less than the fines for violations of other heavy-duty truck inspection provisions. For example, while the penalty for first time violations of the smoke opacity test is \$300, a failure to correct the violation within 45 days or pay the minimum penalty results in a \$800 fine, and any further violations within a 12 month period results in a \$1800 fine. *See* Title 13 Cal. Code Regs. §2185 (a)(2)(A) and (C). Moreover, the failure to correct such excessive smoke violations can result in ARB directing the California Highway Patrol ("CHP") to remove the noncompliant vehicle from service. Cal. Veh. Code §27159; Cal. Health & Safety Code § 44011.6(f). Here, the proposed rules do not include graduated fees of any kind, or authorize ARB or CHP to place noncompliant vehicles out of service. Thus, every effort should be made to increase the fine to the maximum amount possible.

Second, to the extent that staff believes that enforcement of AB 1009 could be strengthened through further legislative grants of authority, we request that the Board direct staff to work with CHP and state legislators to obtain that authority. ARB staff has informed us that because AB 1009 did not grant express authority to the agency to impose fines higher than \$500 or to place noncompliant vehicles out of service, they are limited by statute to imposing monetary penalties that do not exceed \$500. Assuming ARB's authority is limited, it is imperative that the agency obtain additional enforcement authority or the intent of the legislation may never be fulfilled. Indeed, it is quite conceivable that citations for noncompliance with the Proposed Rules will be ignored given that noncompliant vehicles can still enter the state, and that noncompliant trucks will not be taken out of service. Accordingly, while we appreciate the time staff has taken to craft the Proposed Rules, it is critical that staff do more to ensure that the objectives of AB 1009 are fulfilled. Thus, to the extent ARB believes that it does not have the authority to impose fines higher than \$500 or place noncompliant vehicles out of service, we request that the Board direct staff to work with legislators to obtain the authority necessary to ensure that AB 1009 is enforced to the fullest extent possible. We also encourage the Board to explore the question of ARB's authority at the next board meeting.

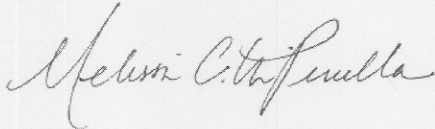
Third, we believe that staff may have underestimated the number of foreign-domiciled trucks that do not meet U.S. federal emission standards and request that the Board direct staff to revise their calculations. The staff report estimates that only 1% of trucks crossing the border do not meet U.S. federal emissions standards. *See* Staff Report, at 3 (Table 1). We believe that this percentage may be underestimated given the nature and size of the survey conducted. Specifically, the sample size for the survey was small, and the locations of the trucks surveyed were not likely to lead to accurate results. Of the five locations surveyed, one of the locations was entirely outside of the border zone where Mexico-domiciled trucks are permitted to travel, and another was at the edge of the border zone where few Mexico-domiciled trucks could be expected to travel. (Castaic is in the LA area, and San Onofre is near San Diego). In fact, only one truck from these two locations was found to be noncompliant. Nonetheless, trucks from both Castaic and San Onofre were averaged-in with the other surveyed locations to determine the percentage of noncompliant trucks.

If the survey results from Castaic and San Onofre are excluded, the noncompliance rate increases to approximately 3%. Further, given that 31% of the trucks surveyed did not have emissions control labels ("ECL"), it is conceivable that the percentage of trucks that do not meet EPA emissions standards could be much higher than 3%. In the end, we feel strongly that the 1% estimate is overly conservative. Obtaining accurate estimates on the number of noncompliant trucks is crucial to understanding the air quality impacts from cross-border trucking and the benefits of the Proposed Rule. In addition, given that ARB and CHP's resources at the border are likely limited, underestimating the number of noncompliant trucks could reduce the resources allocated to implement the Proposed Rules. Thus, we encourage the Board to direct staff to:

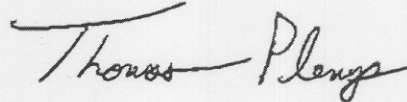
1. Continue its survey of cross-border trucking fleets in order to increase the survey size and accuracy of the percentage of noncompliant vehicles. Specifically, staff should ensure that the survey locations chosen will yield accurate data, and that part of the survey includes identifying whether the trucks surveyed have U.S. or Mexico license plates.
2. Determine whether the trucks that are missing ECLs meet U.S. emission standards. The staff report indicates that staff plans to work with heavy-duty engine manufacturers to develop a serial number database to verify the accuracy of ECLs. The Board should require staff to undertake this effort. Further, if possible, the database should be developed to permit inspectors to determine compliance with EPA emission standards by inputting engine serial numbers in situations where ECLs are missing.
3. Issue periodic reports (at least annually) on the results of its survey to the Board and public, or at the very least, on ARB's website.

We believe that incorporating the above recommendations will strengthen the Proposed Rules and better protect the health of Californians. Thank you for considering our comments.

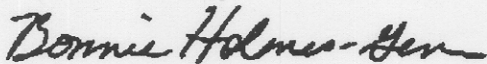
Sincerely,



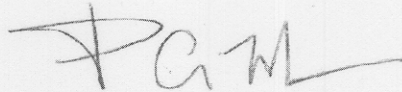
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Natural Resources Defense Council



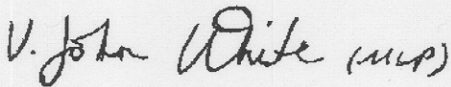
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Research Manager
Coalition for Clean Air



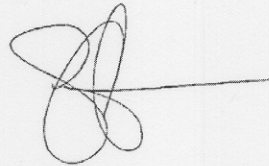
Bonnie Holmes-Gen
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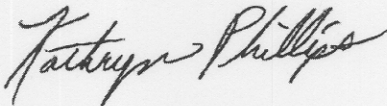
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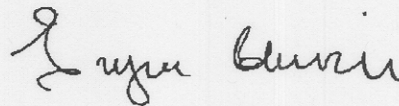
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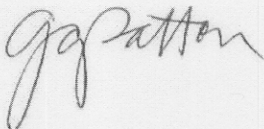
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California Clean Air for Life Campaign



Enrique Chiock
CEO & President
American Lung Association of Los Angeles County



Gary A. Patton
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